

## **7 Was Evidence Placed “Under Seal” in the Case?**

Generally speaking, in legal cases, it’s hard to prove that particular evidence has been placed “under seal.” This is because “under seal” means the judge has issued an order forbidding public disclosure of information. Simply put, it’s hard to know what you don’t know. Sometimes evidence is sealed only prior to trial, and it becomes un-sealed when trial gets under way. Most often, however, if something is “sealed,” it stays that way until the trial ends—sometimes even longer if the reason it was sealed remains a valid concern after the trial is over.

The best way to figure out whether evidence has been sealed is to first understand what you can expect to be revealed in the first place. When it’s fair to expect that certain information will be part of a case, yet the files released to the public don’t contain such information, it’s reasonable to infer that the information has intentionally been placed “under seal” by the court. For example, every court proceeding has a “Docket Sheet” to keep track of events in the case. In Florida, it’s called an “Events and Orders Sheet.” It’s the court’s list of motions and orders that shows all the proceedings leading up to the trial. A sample entry in a docket sheet might say something like this: “Defendant’s Motion For Funds to Hire Investigator.” The docket sheet would note the date the motion was filed, whether the prosecution filed an opposition, and whether the court granted or denied the motion. All legal cases have docket sheets, which means if one has not been made available to the public, it can be inferred that the court has ordered it “sealed.”

### **Why Are the Docket Sheets and Some Warrants Not Available?**

What are the reasons a docket sheet might not be available to the public? One answer is that too much information in the docket sheet relates to material that is “under seal.” Rather than disseminate a redacted docket sheet (which would allow for some parts to be disclosed but with lots of sections blacked out), the court sometimes finds it more efficient to order the whole thing sealed, though the judge will usually then find other ways to inform the public about events in the case that are not related to sealed information. For example, the court might make announcements about hearings, and allow the parties to release copies of certain motions and memoranda. In this way, the public has a sense of at least some of the happenings in the case. Releasing limited information also distracts public attention away from the fact that lots of evidence is under wraps.

Other information that should also have been revealed in a case like Casey Anthony’s includes the multiple search warrants that were executed. A couple of warrants have been released to the public, but warrants that allowed law enforcement to search the hard drives of computers to which Casey had access have not been released. According to a computer forensics report prepared by Orange County

Sheriff's Office forensics examiner Sandra Cawn, a search warrant for Casey's laptop was obtained on July 16, 2008. Another warrant to search George and Cindy's desktop computer (which was used by Casey) was issued August 6, 2008. Where are these warrants? Why have they not been released to the public? Why would a warrant to search the Anthony home be publicly available, but not a warrant to search the electronic contents of computer files?

While the public may not have had a right to full disclosure while the case was pending, all search warrants should be released when a trial ends—especially if the verdict is “not guilty” because there's no chance of a re-trial, thus no reason to continue to worry about unfair publicity or tainting the jury pool, etc. At a minimum, the public is entitled to full disclosure of *whether* and *why* any information was withheld in the first place, and an explanation for why a particular piece of evidence will continue to be kept secret from the public now that the verdict has been reached. This is basic legal protocol under public records laws in all states, including Florida.

When law enforcement and the court system spend the public's money to redress a public offense, the information gathered is effectively the public's property. And because law enforcement officials are paid with tax dollars, the public has a right to know how their money is being spent so they can hold the government accountable. This is why public records laws uniformly require officials to explain *with precision* why a particular bit of information is “under seal” or otherwise unavailable to the public. In light of these baseline principles, all public officials, including court personnel, prosecutors and cops, are obligated to either release information in their custody, or provide a detailed explanation for why particular information is being withheld.

Some will complain that it isn't fair to infer the existence of sealed evidence from the absence of information, which is a bit like arguing that it's unfair to infer a person's guilt when they decline to testify at trial by asserting their Fifth Amendment right to remain silent. The difference is, of course, that there's no constitutional right at stake for any individual when the court system shields evidence in a homicide trial from public view after an acquittal. To the contrary, it is the public's right to know that vests in fundamental constitutional rights—principles essential to a free and healthy democracy. There's no competing constitutional right to secrecy. Nevertheless, it's also true that the court's “sealing” process often ensures not only that the public doesn't see the evidence, but also that it never finds out about the *fact* that evidence has been sealed. The hard part for the public is finding out whether sealed evidence exists. If the public doesn't *know* that a judge issued an order sealing certain evidence, it's almost impossible for the public to request an unsealing. Lucky for us in this case, mistakes were made that, even before trial, revealed the existence of sealed evidence in the Casey Anthony case.

### **Sealing Shenanigans**

A sealing order is typically written in a manner that effectively prevents the public from even knowing that such an order exists, but in a case the magnitude of Casey Anthony's, where law enforcement has acquired voluminous evidence and public demand for information is insatiable, mistakes happen and information gets out. Ironically enough, it was Jose Baez who let the cat out of the bag about sealed

evidence when he made a big fuss about it during Cindy Anthony's deposition. Watch in the following section how many times he talks about evidence being "sealed" during a ruckus that begins at page 496 of the transcript where the lawyers are discussing "exhibit 22," described as a page "with a photograph at the bottom." (See Exhibit 11).

Prosecutor Jeff Ashton notes that in a document containing two images, "the top **picture is sealed.**" Cindy then attempts to point out that she has no familiarity with the sealed photograph before Jose Baez jumps on her to be quiet:

*CINDY: "...just for the record, the only document I recognize on this is the—"*

*BAEZ: "Cindy, don't, don't, don't".*

*CINDY: "No. I just want to make sure because—"*

*BAEZ: "Cindy, no, no."*

*CINDY: "We stopped—Okay".*

*BAEZ: "Cindy, you can't go into anything".*

*CINDY: "Well, I was cut halfway off and—I'm sorry".*

*MR. CONWAY: "That's all right".*

*BAEZ: "Zip it".*

What was hidden behind Baez's aggressive silencing of Cindy at that point?

A few pages later, at 503, the topic comes up again when Cindy is questioned by prosecutor Linda Burdick:

*BURDICK: "Did you see, observe her [Casey] gathering up photographs or videos, anything like that, images of Caylee?"*

*CINDY: "Yeah, she—"*

*BAEZ: "I'm going to object at this time."*

*BURDICK: "I'm asking for the witness' observations".*

*BAEZ: "I think we need to go off the record for a second".*

*ASHTON: "I don't—I don't think we should be going off the record if we're discussing legal matters ...objections. Let's just get the reasons on the record and—"*

*BAEZ: "Well, it relates to **something that's already been sealed.** That's why I think—"*

ASHTON: "Well, if the court is ever going to make rulings—"

BAEZ: "Okay. I understand. Why don't we go off the record. If you feel that you need to put it on the record, then we can put it on the record."

ASHTON: "I don't think—"

BAEZ: "But what you're asking this witness to do, okay, is to go into **an area that the judge has sealed.**"

BURDICK: "I have no idea what you're talking about".

BAEZ: "I have an objection to it right now, and I think that —"

AHSTON: "**Photographs**".

BAEZ: "I think we need to—I think we need to talk about it. I believe we can all agree".

BURDICK: "No. I'm just asking what she observed being removed".

BAEZ: "You—can we—can we discuss this?"

BURDICK: "I know what you're talking about. I'm going to ask the question, what she observed being removed?"

BAEZ: "I think it's—but if I go on any further it's going to become even more clear and—I'm going to be divulging **things that have already been sealed** and I don't think that—"

BURDICK: "I know what you're talking about."

BAEZ: "I think what you're doing is **going into an area that's been sealed.**"

BURDICK: "Not as to her observations"

ASHTON: "Well, just note your objection. There isn't a privilege being claimed, correct? " [note: privilege refers to a rule of evidence, such as the attorney/client privilege, that allows a witness not to reveal confidential information].

BAEZ: "Well, I think there—I think it's quite clear to everyone here that area —**that topic has been sealed by the court** and—"

BURDICK: "I know what you're referring to, Mr. Baez. I'm going to ask —"

BAEZ: "Let's take a break. I'd like to confer with my counsel —"

OFF THE RECORD – THEN BACK ON AGAIN AT PAGE 506.

BAEZ: "Okay, It's our position that this is **an area that's going to be in violation of a court order**. We're asking if you guys would like to discuss it off the record. If you don't, and you want to continue and proceed, we're going to ask that we suspend the deposition until we can get guidance from the court."

BURDICK: "Is that an objection?"

BAEZ: "Well, I don't know how Mr. Conway feels—well I do know how Mr. Conway feels. I believe he agrees that this is the right thing to do because he's about to have his client—"

CONWAY: "To come back and answer those if the judge says answer those."

ASHTON: "Well, the difficulty is, is by Florida deposition practice, the only question a witness is privileged not to answer is a claim of privilege; and there's no claim of privilege here. You're asking—you're stating an objection. The court can always, if it finds an objection appropriate, to strike or redact, if you will, answered in a deposition. So at this point, your remedy is to, after the deposition is done, to state your objection to the court, have the court redact, if the court agrees with you. There's no prejudice [note: prejudice means harm] to the defense in getting this answer now because it does not prevent you from going to the court and making your point if your concern is—your—my understanding is your concern is not that we will learn something that we don't already know."

BAEZ: "Correct."

ASHTON: "You indicated because we already know this. **Your concern is the public knowing something**. And you have a remedy, which is to go to the court to ask the court to either strike or redact or seal some portion of the deposition. So at this point, I don't believe that it's appropriate to suspend the deposition because the concern is not that we'll learn something we don't already know. So you have a remedy. So at this point, I don't believe, under Florida law, that we're required to suspend in order for you to effect your remedy."

LYON: "Can I respectfully disagree for just a minute Mr. Ashton?"

ASHTON: "Sure."

LYON: "You know what's going to happen is that **this information will make its way into the public wheel some kind of way once the question is answered. And there's a court order that we're trying to obey here**. I think you can certainly infer and know what it is. And I just don't see what the harm is to you in either going off the record and having a full discussion with this, or suspending the deposition so that we can have a full discussion of this with the judge, or simply skipping the question altogether and asking other questions. And you know, we certainly wouldn't object in the event you're successful or that the judge doesn't agree that it would be **violating a court order to ask these questions, that, you know, you can ask these questions** some other time. You're putting the —putting everybody in a very awkward position for no particular reason that couldn't be delayed at least a little bit."

ASHTON: "I think the problem is, anyone who would spill the beans if the question is answered already knows the answer and could spill the beans if they were so inclined. But Linda, [referring

*here to prosecutor Burdick] it's your deposition. You know, I think Linda has already said what she wants to do so –"*

[A DISCUSSION FOLLOWS ABOUT WHETHER CINDY WOULD COME BACK FOR ANOTHER DEPOSITION]

*ASHTON: "Is the defense indicating that they are intending to file some sort of motion for a protective order?"*

*BAEZ: "Yeah"*

*ASHTON: "So it's not going to be—the onus is not going to be on us to have the court rule on this, right? That's what you're requesting."*

*BURDICK: "My question was—did you see Casey?"*

*BAEZ: "We know what the question was. I think that what we'll do—yes. We will represent that we can **bring this to the judge's attention to make a ruling. And if he rules that the questions fall outside of the court's order**, we're willing to come back. No harm/no foul. Just leave it at that."*

In this one section of transcript, the lawyers repeatedly mention photographs of Caylee being "sealed", and refer to the court issuing an order "sealing" information about the photographs eleven times!

It's hard to know exactly what's contained in these sealed pictures of Caylee, or what is meant by the fact that the court has sealed an entire "topic" from public knowledge, but in a case where a child dies a gruesome death, and horrific photographs of her remains have already been released, it's tough to imagine that *more* prejudicial photographs could even exist.

### **Why Are Photographs of Caylee Under Seal?**

One possibility is that the sealed images of Caylee depict her in a sexually exploitive manner. It's a fair inference because only particularly disturbing or sensitive images could merit the unusual action of a court "sealing" the information from all public access. Less disturbing images could have simply been ruled irrelevant, but still made available to the public, or returned to the family.

It is significant that photographs were not only taken as evidence, but also kept by law enforcement officials, and then hidden from the public in a file so secretive, even the *topic* that would describe the content displayed in the photographs has been "sealed" by the court.

It's also fair to assume the photographs are sexualized because of the fact that *search warrants for computer files* have also been withheld from public view. In a case where a child dies in connection with the use of chloroform, which is causally related to child pornography, and where whole files have reportedly been deleted from computers to which Casey had access, a computer search for images of child pornography would have been necessary and appropriate.

The fact that we know computers were searched, but we cannot see the warrants that authorized the searches, or photographs of the child victim in the case, is a *strong indication* that cops were authorized to look for images of children in the process of being sexually exploited.

The public has a right to know what was so shocking about photographs of Caylee, that not only was the judge compelled to seal them from all public access, the mere mention of the topic launched super-cool Jose Baez into a hot frenzy.

### **Possible Future Actions Against Casey**

It's possible that some search warrants remain under seal because the FBI is not yet done with its investigation of some of the facts and circumstances involving Caylee's death. If there is any federal investigative activity still underway, disclosure of things like search warrants can be denied under the "ongoing investigation" exception to the public records law. It's an important if overused exemption that cannot last forever. In fact, good judges won't tolerate the excuse for long, which means a court will one day soon order full disclosure of the entire case file but only if the public keeps up the pressure.

One way to do that is to consistently file updated requests for all information related to the case, with state and federal officials, under Florida's Sunshine Law and the federal Freedom of Information Act (FOIA).

The following two websites provide simple instructions, sample letters and easy to understand explanations about what can and cannot be withheld from the public:

**[www.myflsunshine.com](http://www.myflsunshine.com)**

*and*

**[www.brechner.org](http://www.brechner.org)**

If the official response states that the requested information cannot be released because of an "ongoing investigation", at least the public will have confirmation that law enforcement is continuing to take *some* action against *some* individuals for *some* reason related to the murder of little Caylee. And remember, they can't cite the "ongoing investigation" exception forever. A judge might give them a year or two, but at some point, a judge will rule that they have to either file charges or reveal the entire case file to the public.